

REMARKS

The application has been restricted into 3 groups as follows:

- I. Claims 1-33 and 68-78, drawn to a compound and a composition.
- II. Claims 34-38 and 66-67, drawn to a kit.
- III. Claims 39-65, drawn to a method of measuring enzymatic activity.

Applicants elect, with traverse, Group I, Claims 1-33 and 68-78. This election is traversed because restriction is only proper if the identified groups are independent or patentably distinct (MPEP § 803). The burden is on the Office to provide reasons and/or examples to support its conclusion that the identified groups are patentably distinct.

The Office has characterized the relationship between groups I and II as subcombinations usable together in a single combination. Citing MPEP § 806.05(d), the Office states that these groups are distinct if they are separately usable. The Office asserts that the compound and composition of group I can be used in assays performed by hand without a kit. However, the Office has failed to show that a manual assay using the compound or composition of group I could be performed without the claim elements recited in the kits of group II.

The Office has characterized the relationship between groups I and III as product and process of use. Citing MPEP § 806.05(h), the Office states that these groups are distinct if the process can be practiced with another materially different product. The Office asserts that the process of group III can be practiced with compounds and compositions other than those of group I. However, the Office has failed to provide an example of a compound or composition not claimed in group I that could be used in the method of group III.

The Office has characterized the relationship between groups II and III as process and apparatus for its practice. Citing MPEP § 806.05(e), the Office states that the groups are distinct if the process as claimed can be practiced by a materially different apparatus or by hand. The Office asserts that the process can be practiced by

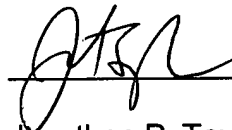
hand without a kit. However, the Office has failed to show that the method of group III could be performed by hand without the claim elements recited in the kits of group II.

Applicants submit that the Office has not met the necessary burden in order to sustain the Restriction Requirement. Withdrawal is therefore respectfully requested.

Should the Examiner feel a discussion would expedite the prosecution of this application, the Examiner is kindly invited to contact the undersigned.

Respectfully submitted,

10-14-04

A handwritten signature in dark ink, appearing to read 'J. Taylor', is written over a horizontal line.

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